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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1153rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 13 March 1996, at 3 p.m.

Chairman: Mr. GARVALOV

later: Mr. BANTON

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Draft concluding observations concerning the thirteenth periodic report of the United Kingdom of Great Britain and Northern Ireland (continued)

Paragraph 20

1. Mr. van BOVEN said that, as a result of further consultations, a number of drafting amendments were proposed. In the first line, the words "all residents of Hong Kong would be granted" should be replaced by "South Asian residents of Hong Kong are granted". In the fifth line, the word "may" was to be replaced by "does", and the word "enter" by "abode in". In the eighth line, the words "permanent residence" were to be replaced by "citizenship".

2. Mr. RECHETOV wondered whether the words "British nationality" in the second line should not be replaced by "British citizenship".

3. Mrs. ZOU Deci questioned the reference to immigration laws, which were not directly relevant to applications for nationality.

4. Mr. WOLFRUM thought that the word "may" in the ninth line should be deleted.

5. Mr. van BOVEN, supported by Mr. CHIGOVERA, proposed that the words "immigration laws may have" in the ninth line should be replaced by "this practice reveals".

6. Responding to observations by Mr. AHMADU, Mr. van BOVEN and Mrs. SADIQ ALI, the CHAIRMAN said he took it that the term "non-white" in the last sentence was to be replaced by "Asian".

7. Mr. CHIGOVERA said that the use of the term "British nationality" in the second line was appropriate, since the BNO and BOC categories did not confer British citizenship. He also thought, with regard to the proposed amendments to the fifth line, that "of abode in" would read better than "to abode in".

Paragraph 25

8. Mr. de GOUTTES proposed the addition of a new paragraph, to be inserted after paragraph 25, with the following wording:

> "The Committee recommends that the next periodic report of the United Kingdom contain detailed information on complaints and sentences relating to acts of racial or ethnic discrimination."

Paragraph 26

9. Mr. van BOVEN said that the words "the elaboration of the 1995 asylum and immigration bill" should be replaced by "further consideration of the Asylum and Immigration Bill of 30 November 1995".

Paragraph 29

10. Mr. SHERIFIS proposed that the word "repeats" in the second line should be replaced by "reiterates".

11. Mr. DIACONU thought that the word "merit" in the first line should be replaced by "be entitled to".

12. Mr. WOLFRUM said that the word "practical" in the last line should be replaced by "effective".

Paragraph 35

13. Mrs. ZOU Deci said that the words "in particular those" and the two commas in the second line should be deleted.

14. Mr. WOLFRUM said he would prefer the replacement of "belonging to ethnic minorities of South Asian origin" by the words "those of Asian origin".

15. Mr. van BOVEN felt that the word "ethnic" should be retained.

16. The CHAIRMAN said he took it that the second line should read "residents belonging to ethnic minorities of Asian origin be".

Paragraph 7

17. Mr. van BOVEN said that, as Country Rapporteur, he had re-examined the State party's thirteenth periodic report, in particular paragraph 26 (a) and (e) thereof. As a result, he proposed that the first sentence should be amended to read: "The legislative proposal to allow the Commission on Racial Equality to accept legally binding undertakings and the introduction of new legislative provisions to tackle the issue of persistent harassment are welcome developments".

Paragraph 12

18. Mr. van BOVEN informed the Committee that, after consultations with other members, it had been agreed, with some reluctance on his own part, to delete all but the first sentence, which reflected the main thrust of the Committee's concern.

19. Mr. CHIGOVERA expressed doubts about whether, in that case, the remaining single sentence should be retained as one of the principal subjects of concern.

20. Mr. WOLFRUM agreed, adding that the issue raised in paragraph 12 was a valid one likely to come up again, namely that in the United Kingdom differences in religion were used as a pretext or screen for ethnic discrimination. Mr. van Boven should therefore be requested to draft alternative wording that would link religious discrimination to racial discrimination.

21. The CHAIRMAN, speaking as a member of the Committee, said that he would prefer the wording as it stood and would find it difficult to agree to a single sentence.

22. Speaking as Chairman, he took it that the Committee wished to allow time for the paragraph to be redrafted and reconsidered at a later stage.

23. It was so agreed.

Footnote 1 on page 1

24. Mr. CHIGOVERA proposed that the footnote on the first page, reading "Mr. Banton (national of the United Kingdom) did not participate in the consideration of the report or the adoption of these observations", should be inserted as a separate paragraph in the introductory part of the report. If that were agreed, he would suggest that a similar paragraph should be included in the concluding observations concerning the report of Zimbabwe.

25. The CHAIRMAN invited members' comments on that question, which might require a formal decision since, although it was not the first time that members of the Committee who were nationals of a reporting State had refrained from taking part in the discussion on the report of the State in question, it was the first time that that had been explicitly stated in the concluding observations.

26. Mr. van BOVEN said that the statement should be confined to a footnote since it concerned a procedural, though important, issue.

27. Mr. RECHETOV said that, while he appreciated the fact that Mr. Banton, whose moral standing was beyond reproach, had wished to demonstrate his independence by not taking part in the discussion on his country's report, he had serious doubts as to whether his position was in conformity with the Convention. The Committee was meant to represent the different forms of civilization and the principal legal systems of the world. Members who declined to take part in discussions on countries they knew well deprived the Committee of their valuable expertise and experience. The same would apply to a member who was not strictly speaking a citizen of a reporting State but had extensive knowledge of the situation there. The fact that other treaty bodies might provide for the inclusion of such a written statement did not necessarily mean that the Committee should follow suit. A decision by an individual member to refrain from taking part in such a discussion was purely a matter of personal conviction. Spelling it out in a footnote or elsewhere would create a precedent.

28. Mr. AHMADU agreed with Mr. Rechetov that non-participation by a member was a purely personal decision which should not be reflected formally in the Committee's report and that the inclusion of such a statement would create an unfortunate precedent. Although as a matter of principle or ethical tradition in the Committee, members who were nationals of reporting States refrained from taking part in the discussion of those States' reports, their special knowledge of the subject could be extremely helpful, for instance in drafting the concluding observations. Mr. Banton's failure to participate had not profited the Committee.

29. Mr. BANTON said that, given the time constraints and the important issues of wider interest that remained to be discussed, he would welcome a decision to omit the footnote and defer consideration of the question of principle to the Committee's next session or the next meeting of chairpersons of treaty bodies. He explained that his non-participation had been motivated not by his views concerning the integrity or independence of individual members, but by his wish not to arouse public suspicion that one State party had an advantage over others because one of its nationals was a member of the Committee. That position was consistent with the practice of the Human Rights Committee. He assured the Committee of his readiness at all times to serve it in any appropriate capacity. The matter could perhaps be further clarified by private consultations before it was next discussed.

30. Mr. van BOVEN agreed that the matter might be discussed by the chairpersons of the treaty bodies, since they were also concerned. At its previous session, the Committee against Torture had held lengthy but inconclusive discussions with a view to adopting a rule of procedure on the subject.

31. The CHAIRMAN pointed out that the chairpersons of the treaty bodies would not be meeting until September 1996.

32. Mr. DIACONU commented that the Committee had always worked very well in the past without any explicit reference to non-participation. Although Mr. Banton and any other member had every right to refrain from participating in the discussion on their countries' reports, allowance should be made for the possibility that, for whatever reason, they might wish on another occasion to forgo that right, which raised the problem of inconsistency in the concluding observations. Moreover, as non-participation had never been placed on record before, the impression might be created that nationals of reporting States had in fact taken part in discussions on their countries' reports in the past. Lastly, concluding observations were drafted by the Committee with or without the participation of an individual member. Mr. Banton's non-participation would be adequately reflected in the summary records.

33. Mr. WOLFRUM said that, although he was in favour of including the statement either in a footnote or elsewhere, the time was not right for a formal decision and he moved that the matter be deferred to the next session.

34. Mr. de GOUTTES disagreed that the discussion should be deferred. A flexible approach was needed. It was up to each individual expert to decide whether to request the inclusion of such a statement, preferably in a footnote. Had he been aware at the time of the practice in other committees, he himself would have made such a request when the periodic report of France had been considered.

35. Mr. CHIGOVERA said that he could agree to the suggestion that the statement should remain in a footnote. When he had joined the Committee he had understood it to be axiomatic that members should not participate in discussions about reports from countries of which they were nationals. Although that had subsequently proved to be a misapprehension, he felt strongly about the requirement in article 8.1 of the Convention that members should be of "acknowledged impartiality". He shared Mr. Banton's belief in

the principle that justice should not only be done but should be seen to be done, and that no one should appear to be a judge in his own cause. He himself had refrained from participating in the discussion on Zimbabwe's report.

36. Mr. YUTZIS referred to two cases in the Committee's history in which members had taken part in the discussion on the reports of the countries of which they were nationals. Although it was customary for members to refrain from such participation, the high moral standing and impartiality required of them would compel departure from that practice if they were convinced, or the facts showed, that, within the scope of the Convention, some injustice was being committed in a country, even if it was their own. He was surprised at Mr. Banton's position, not because of his choice to remain out of the discussion - which was entirely a matter of individual conscience - but because the Committee was being placed before a fait accompli without having had the opportunity to discuss the full implications of the principle involved, which was also of concern to other treaty bodies. Therefore, the statement could not appropriately be included in the footnote, much less in the introduction.

37. Mrs. SADIQ ALI considered that Mr. Banton had been right not to take part in the discussion of his country's report. She had always scrupulously followed the same practice when her country's reports had been considered.

38. Mr. VALENCIA RODRIGUEZ wished to place on record his support for Mr. Diaconu's position. Members normally refrained, for reasons of delicacy and personal integrity, from commenting on their country's reports, but that was a decision for each individual member to take. There were two forms of non-participation: leaving the room or staying silent during the debate. In the latter case the member might contribute to decisions by consensus. Only if a vote was taken need the member's non-participation be mentioned in the summary record. In neither case was a footnote in the concluding observations required. Rather than wasting time on the matter, the Committee could set up a working group to examine the issue for the next session.

39. The CHAIRMAN said he took it that the Committee would prefer the matter to be deferred to the next session.

40. Mr. SHERIFIS, speaking on a point of order, said that he would have preferred the Chairman to base his ruling on the desirability of waiting until the chairpersons of the treaty bodies had discussed the issue.

41. The CHAIRMAN, responding to a question from Mr. AHMADU, said he took it that, pending a final decision on paragraph 12, the Committee wished to adopt the draft concluding observations concerning the thirteenth periodic report of the United Kingdom, without the footnote referring to Mr. Banton and subject to amendments proposed during the discussion and possible drafting changes.

42. It was so decided.

43. Mr. Banton took the Chair.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 5) (continued)

States listed under the early warning and prevention procedure

44. Mr. WOLFRUM, supported by Mr. SHERIFIS and Mr. GARVALOV, suggested that the Russian Federation should be removed from the Committee's list under the early warning and prevention procedure. It had submitted a report, which the Committee had discussed, and would be submitting another.

45. It was so decided.

46. Mr. YUTZIS suggested that Croatia should remain on the list, particularly in view of recent disturbing reports from the region.

47. It was so decided.

Draft decision on Bosnia and Herzegovina (CERD/48/Misc.15)

48. Mr. van BOVEN said that, in drafting the document under consideration, he had taken into account the comments made during the Committee's earlier discussion of Bosnia and Herzegovina. However, the Committee might wish to add to the text an explicit decision to keep that country on its list.

49. Mr. WOLFRUM endorsed the draft decision, together with the amendment proposed by Mr. van Boven. He suggested, however, that paragraph 1 should specifically mention not only the High Commissioner for Human Rights but also the Special Rapporteur on contemporary forms of racism, with whom the Committee had always worked closely.

50. Mr. RECHETOV was concerned at changes that had been made from the discussion paper discussed earlier by the Committee. Paragraph 2, for example, mentioned the "State party concerned", whereas the discussion paper had mentioned all the parties to the Dayton Accords. The result was one-sided, implying that consultations had to be restricted to the Government of Bosnia and Herzegovina. If that Government then put obstacles in the way of meetings with other parties, the Committee's initiative would be rendered futile. He suggested that "consultation with the State party concerned" should be replaced by "consultation with all parties to the Dayton Accords in the State party concerned".

51. The CHAIRMAN pointed out that the changes to the text reflected the criticism by some members that the original draft had neglected the status of the Government of Bosnia and Herzegovina as a State party. There was no reason why the Committee should not develop its ideas in future additional decisions.

52. Mr. DIACONU proposed two amendments in the interests of precision. First, he questioned the need to include the phrase "and one or more of its members" in paragraph 1. It was sufficient to give authority to the Chairman. Secondly, he agreed with Mr. Rechetov that interested parties other than the Government would at some stage have to be included in the offer of good

offices. He therefore suggested that the word "efforts" in the second line of paragraph 2 should be followed by "in consultation with all interested parties".

53. Mr. GARVALOV proposed the insertion, either as a preambular paragraph or as paragraph 4, of the following sentence: "The Committee will continue to review the situation in Bosnia and Herzegovina under its early warning and urgent procedures."

54. Mr. van BOVEN said that the wording suggested by Mr. Garvalov could constitute a preambular paragraph. He agreed to the deletion of the phrase "and one or more of its members" in paragraph 1, but suggested that it could be replaced by "in close contact with the members of the Bureau". With regard to the suggestion that the Special Rapporteur on contemporary forms of racism should be specifically mentioned in paragraph 1, he felt that the High Commissioner for Human Rights had a particular coordinating function, whereas the Special Rapporteur's duties were operational. He suggested that the words "other United Nations bodies" could be followed by "notably the Special Rapporteur on contemporary forms of racism".

55. With regard to the point raised by Mr. Rechetov, he had no objection to mentioning the other parties to the Dayton Accords, including the Republic of Serbia, even though the President of that Republic was currently under indictment for war crimes and crimes against humanity. The wording proposed by Mr. Diaconu was therefore acceptable. He pointed out that, when the Committee had concerned itself with Kosovo, it had approached the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), and had left to the members of the good offices mission the task of seeking out other interested parties. There was no reason why the same practice should not be followed in the case of Bosnia and Herzegovina.

56. Mr. YUTZIS thought that it had been agreed to set up a working group to act as an advisory body on the situation in various countries, including Bosnia and Herzegovina, Burundi and Rwanda. That decision should be inserted in paragraph 1.

57. Mr. DIACONU supported the proposal for the establishment of a working group, but felt that it should not be mentioned in the draft decision as it had not yet been put into effect. The Government of Bosnia and Herzegovina would not have heard of the working group and might react negatively.

58. Mr. van BOVEN agreed that a reference to the working group would be premature. By the next session the Committee would have more information and could then decide whether it was necessary to set up the working group.

59. The CHAIRMAN said he took it that the Committee wished to adopt the draft decision on Bosnia and Herzegovina, subject to amendments proposed during the discussion and possible drafting changes.

60. It was so decided.

Draft decision on the Federal Republic of Yugoslavia (Serbia and Montenegro) (CERD/48/Misc.16)

61. Mr. van BOVEN said that the draft decision was based on earlier reports on the country. It contained no new ideas and was simply an attempt to reopen the dialogue with the State party, in the hope that the good offices rendered by the three-member mission in 1993 could be resumed.

62. Mr. WOLFRUM said that, as one of the members of the 1993 mission, he fully endorsed the draft decision. Contacts with the Government had been broken off not by the Committee, but by the force of events. The mission had established a good working relationship with the various ministries in the State party. The Committee was right to offer a resumption of contacts.

63. Mr. GARVALOV said that he endorsed the draft decision since the time was right for the Committee to sound out the Government's feelings about the resumption of the mission.

64. Mr. AHMADU said that it had been stressed to the Committee that missions to the Federal Republic of Yugoslavia (Serbia and Montenegro) could only take place during the Committee's sessions in order to limit costs. However, it should be ascertained whether the Government was ready to accept a mission in the first place.

65. Mr. van BOVEN, replying to a drafting point raised by Mr. de GOUTTES, suggested the inclusion of the wording used in the Committee's report to the forty-eighth session of the United Nations General Assembly (A/48/18), in the section on the Federal Republic of Yugoslavia (Serbia and Montenegro), which read: "The purpose of the mission would be to help promote a dialogue for a peaceful solution of issues concerning respect for human rights in Kosovo, in particular the elimination of all forms of racial discrimination". The Government would then be in no doubt that the Committee was merely continuing its original mandate.

66. The CHAIRMAN said he took it that the Committee wished to adopt the draft decision on the Federal Republic of Yugoslavia (Serbia and Montenegro), subject to amendments proposed during the discussion and possible drafting changes.

67. It was so decided.

Draft declaration on the situation of Rwanda (CERD/48/Misc.11/Rev.2)

68. Mr. VALENCIA RODRIGUEZ said that Mr. Yutzis had proposed several amendments to the text. It was suggested that, in the first paragraph, "administrative institutions" should be replaced by "public institutions" and the words "and the restoration of the social fabric" should be added at the end of the paragraph. In the second paragraph, "a continuing factor disturbing the efforts for peace" should be replaced by "a continuing disturbing obstacle to the efforts for peace". In the third paragraph, "the form of government" should be replaced by "the government".

69. Mr. GARVALOV supported the proposed wording for the amendment to the third paragraph.

70. Mr. DIACONU felt that the word "disturbing" was superfluous in the amendment to the second paragraph, and that the amendment to the third paragraph should read "the structure of a government".

71. Mr. CHIGOVERA said that he could accept the amendments to the first paragraph and agreed with Mr. Diaconu that the amendment to the second paragraph should read: "a continuing obstacle to the efforts for peace". However, the proposal to replace "form of government" by "government" in the third paragraph was totally unacceptable. Also in the third paragraph, the phrase "assist in preparing" should be replaced by "assist in the preparation of".

72. Mr. de GOUTTES said that at some point the Committee should stress that it was ready to assist Rwanda not just with the convening of a constitutional conference but also, for example, in providing human rights training for law enforcement officers and the military.

73. Mr. WOLFRUM suggested that, in view of the Committee's decision to set up a working group, a reference to other forms of assistance could be made at a later date. The wording proposed by Mr. Valencia Rodriguez should be retained.

74. Mr. AHMADU said that he wished the reference to "other human rights bodies" to be deleted from the third paragraph.

75. Mr. SHERIFIS suggested that the reference should be retained, with an additional reference to the United Nations High Commissioner for Human Rights.

76. Mr. YUTZIS said that he could agree to the rewording of the second paragraph, but the destructive role of the mass media in Rwanda had to be stressed. He still felt that it was wrong to refer to the "form of government".

77. Mr. VALENCIA RODRIGUEZ supported Mr. Chigovera on the need to retain the phrase "form of government".

78. The CHAIRMAN said he took it that the Committee wished to adopt the draft declaration on the situation of Rwanda, subject to amendments proposed by members during the discussion and possible drafting changes.

79. It was so decided.

The meeting rose at 6.05 p.m.